03-17000R-ord(Racette-recon).wpd

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: WELDING ROD PRODUCTS LIABILITY LITIGATION	:	**Case No. 1:03-CV-17000**
	:	**(MDL Docket No. 1535)**
	:	**JUDGE O'MALLEY**
	:	**MEMORANDUM AND ORDER**

Earlier, defendants in this MDL action served a subpoena upon non-parties Dr. Brad Racette and Washington University, where Racette does research (collectively, "Racette"). Racette filed a motion to quash. The Court granted in part and denied in part the motion to quash, setting out categories of documents that defendants were and were not entitled to discover. *See* docket no. 1343 ("*Racette Discovery Order*"). The Court also entered a protective order regarding the documents discovered from Racette. *See* docket no. 1352 ("*Racette Protective Order*").

Defendants subsequently filed a motion for reconsideration of the *Racette Discovery Order* (docket no. 1379). For the reasons and to the extent stated below, the motion for reconsideration is **GRANTED IN PART and DENIED IN PART**.

In their motion for reconsideration, defendants ask the Court to revisit two areas of discovery. First, defendants again ask for Racette's IRB application. The Court remains of the opinion that defendants are not entitled to discovery of the IRB application, so this request is again denied.

Second, defendants ask the Court to revisit the type and amount of data that the Court allowed defendants to discover. Defendants explain that, "[t]o replicate Dr. Racette's work, it is

necessary to match each study participant's occupational status with his or her neurological condition as diagnosed by the study's researchers," but the data the Court allowed them to discover pursuant to the *Racette Discovery Order* does not permit them to do so. Defendants again ask the Court to order production of "all data code books," "all data sets," all statistical programs and calculations, and so on.

The Court remains convinced that, "after balancing the needs of the defendants with Racette's legitimate concerns (including patient privacy issues, the asserted research scholar privilege, and the burden of production), the defendants are entitled only to" some of the data they again request. *Racette Discovery Order* at 1. On the other hand, the Court also believes defendants are, in fact, entitled to discover enough data to permit the defendants to link the diagnosis, occupation and age of Racette's study participants.

Accordingly, the Court grants in part the motion for reconsideration as follows. Racette shall also produce to defendants a "limited data set" which links the specific categories requested by defendants: diagnosis, occupation, and age. This information may be produced as a "de-identified" data set, such that the categories would be linked to each particular patient, without using any individual patient identifiers. This data set should: (1) allow matching of each study participant's occupational status and age with his or her neurological condition, as diagnosed by the study's researchers; and (2) to the greatest extent possible (except for necessary de-identification), show original coding and any code-keys. Racette shall make every effort to produce this data set by October 31, 2005 (or earlier, if possible).

All relevant aspects of the *Racette Discovery Order* (e.g., defendants' obligation to pay Racette for the reasonable costs of producing the limited data set) and the *Racette Protective Order*

(e.g., the requirement that persons obtaining access to Racette's data shall execute a non-disclosure affidavit) continue to apply. Further, all persons examining this data set shall keep complete and accurate records of all manipulations, computer runs, outputs, or other examinations of the data.

No further access to Dr. Racette's data will be authorized for any party.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

DATED: October 18, 2005